

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHARON R. OLSON, a married woman,

Case No. C14-0786RSM

Plaintiff,

V.

STATE FARM FIRE AND CASUALTY
COMPANY, a foreign insurer,

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO QUASH**

Defendant.

I. INTRODUCTION

This matter comes before the Court on Defendant's Motion for Protective Order and to Quash Portions of the Subpoena Duces Tecum Issued to Mary Reif, M.D. Dkt. #35. Defendant seeks to quash two of the eleven subcategories of documents requested of Dr. Reif, one of its expert witnesses, at her upcoming deposition: 1) a list of written materials and documents used or relied upon by [Dr. Reif] in this matter; and 2) all financial records, including tax returns and 1099s, showing all income earned from forensic work within the last three (3) years. *Id.* Defendant argues that Dr. Reif has already disclosed a list of written materials and documents relied on in her expert witness report and supplement, which have been provided to Plaintiff. Defendant also argues that the request for all "financial records" is vague, ambiguous, overly broad and unduly burdensome, and that the same information can be gathered in a less intrusive manner through her deposition testimony. *Id.* Plaintiff opposes the

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1 motion, arguing that Defendant does not have standing to object to the subpoena issued to Dr.
 2 Reif, and that Plaintiff is entitled to the documents requested in any event. Dkt. #37. For the
 3 reasons set forth herein, the Court GRANTS IN PART and DENIES IN PART Defendant's
 4 motion.

5 **II. ANALYSIS**

6 **A. Standing**

7 As an initial matter, the Court rejects Plaintiff's argument that Defendant lacks standing
 8 to bring the instant motion. Federal courts have consistently held that a party who wishes to
 9 object to a subpoena issued to a third-party may do so by filing a motion for protective order or
 10 to quash. *See, e.g., Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 636 (C.D. Cal. 2005); *Anderson*
 11 *v. Abercrombie & Fitch Stores, Inc.*, 2007 U.S. Dist. LEXIS 47795, *5 (S.D. Cal. July 2, 2007).
 12 Moreover, at least one other District Court has found that the relationship between a litigant
 13 and its hired expert witness affords standing for the purposes of resolving discovery disputes.
 14 *Burger v. Allstate Ins. Co.*, 2009 U.S. Dist. LEXIS 47929, *3-4 (E.D. Mich. June 8, 2009).
 15 Accordingly, the Court considers the substantive arguments made through Defendant's motion.

16 **B. List of Written Materials Relied Upon**

17 Defendant first objects to the subpoena to the extent that it requires Dr. Reif to
 18 "prepare" a list of document she relied upon when drafting her expert witness report and
 19 supplements thereto. Dkt. #35 at 2-3. Plaintiff concedes that "the Subpoena does not
 20 command her to prepare any such list but rather, only to produce such a list if it exists." Dkt.
 21 #37 at 5. According to Defendant, Dr. Reif has already prepared such a list in conjunction with
 22 her expert witness report. Dkt. #35 at 3. There is no argument that it would be unduly
 23 burdensome for her to produce the list again. While Defendant's counsel insists that he has
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already produced the list to Plaintiff's counsel, the subpoena has not been directed at counsel. Therefore, it is Dr. Reif's obligation to produce the documents requested, even if the documents have previously been produced by parties to the litigation. Dr. Reif is not required to "prepare" the list anew, but must provide what she has already prepared and has in her possession responsive to the subpoena. Accordingly, the Court DENIES this portion of Defendant's motion to quash.¹

C. Financial Records

Defendant next objects to the subpoena to the extent it seeks all financial records, including tax returns and 1099s, showing all income earned from forensic work within the last three (3) years. The Court agrees that this portion of the subpoena is overbroad. There is no dispute that Plaintiff is entitled to information about Dr. Reif's income and the portion of such income attributable to work as an expert witness. Indeed, it is standard practice for litigants to inquire about such matters at expert witness depositions. However, the term "all financial records . . . showing all income earned from forensic work" is overbroad and unduly burdensome as it appears to require Dr. Reif to produce a wide range of documents, including any of her bank statements reflecting such income.

Likewise, the Court finds that Dr. Reif's complete tax returns are irrelevant and overbroad for the purpose requested here. *See Behler v. Hanion*, 199 F.R.D. 553, 561-62 (D. Md. 2001). In similar circumstances, the District of Maryland noted:

For example, plaintiff seeks discovery of the total income earned by Dr. Keehn for the last five years, the amount thereof earned providing defense Rule 35 examinations, records relating to the hours spent by Dr. Keehn in this capacity, copies of his tax returns, and a listing of all insurance

¹ To the extent Plaintiff's counsel argues that correspondence with defense counsel is discoverable, *see* Dkt. #37 at 5, the Court also reminds Plaintiff that Federal Rule of Civil Procedure 26(b)(4)(C) protects from disclosure communication between the expert and counsel with only limited exceptions.

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1 companies with whom he is affiliated, as well as a listing of all cases in
2 which he has provided expert services. **This is overkill.** While there may
3 be cases in which an expert's gross income, and the specific amounts
4 thereof earned by providing services as an expert witness, may be
discoverable, this should not be ordered routinely, without a showing,
absent here, why less intrusive financial information would not suffice.
5 Most people are sensitive about their income, and who knows the details
about it. By their very nature, expert witnesses are knowledgeable of
6 information that is scientific, technical, or specialized, generally acquired by
long, hard study and experience. When asked to provide expert testimony,
7 they are in a position to request compensation that matches their
qualifications, which can seem shockingly high to those not familiar with
the costs of modern litigation. Moreover, in the post-*Daubert/Kumho Tire*
8 era, and in light of the Rule 26(a)(2) disclosure requirements and the recent
changes to Rules 702 and 703, counsel increasingly are more selective in
9 who they ask to be expert witnesses, knowing that they will be subject to
the utmost scrutiny. Those who pass muster likely will be able to command
10 fees commensurate with their skill and experience, which may, to a lay
11 member of the jury, appear exorbitant, when in fact what was charged is the
going rate. Rule 26(a)(2)(B) requires disclosure of the compensation
12 received by a retained expert in the particular case at issue, and counsel
routinely bring this out during cross-examination when questioning an
13 opposing expert witness. However, permitting routine disclosure of the
expert's gross compensation, from all sources – including those unrelated to
litigation activities – would provide the jury with little information relevant
14 to a fair assessment of the expert's credibility, while concomitantly
introducing the real possibility of creating confusion, distraction and even
15 prejudice. Nor is the trial of a case facilitated if a party sponsoring an
expert attempts to draw the possible sting of expert compensation by
attempting to prove that what his or her expert charges is within the norm,
as this opens the door for collateral issues that could further distract the
16 jury.
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19 Instead, the jury readily should be able to assess possible bias on the part of
an expert witness if they are made aware of the total percentage of his or her
20 gross income that is earned from providing expert witness services.
Similarly, there is no need for the expert to have to produce his or her tax
21 returns, if the party seeking the discovery has accurate information
regarding the percentage of income earned as an expert.
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25 *Behler*, 199 F.R.D. at 561-62 (emphasis added); see also *Rogers v. United States Navy*, 223
26 F.R.D. 533 (S.D. Cal. 2004) (finding that estimates of the percentage of income earned from
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1 expert witness work was adequate for bias purposes and additional documents showing entire
2 income earned from medical-legal practice were not necessary to disclose).

3 The Court finds that Plaintiff can obtain information about Dr. Reif's income and the
4 percentage attributed to expert witness work through her testimony at deposition, without the
5 need for her broad financial records, complete tax returns and 1099 forms. Accordingly, the
6 Court GRANTS this portion of Defendant's motion to quash, and Dr. Reif need not produce
7 such documents.

9 **III. CONCLUSION**

10 Having reviewed Defendant's motion, the opposition thereto and reply in support
11 thereof, along with the accompanying declarations and exhibits, and the remainder of the
12 record, the Court hereby finds and ORDERS that Defendant's Motion for Protective Order and
13 to Quash (Dkt. #35) is GRANTED IN PART AND DENIED IN PART as set forth above.

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15 DATED this 23 day of February, 2015.
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18 RICARDO S. MARTINEZ
19 UNITED STATES DISTRICT JUDGE
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